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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,352

11/21/2003

John R. Wall

3257-031853

3304

28289

7590

09/08/2008

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EXAMINER

FERGUSON, MICHAEL P

ART UNIT

PAPER NUMBER

3679

MAIL DATE

DELIVERY MODE

09/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/719,352

**Applicant(s)**

WALL, JOHN R.

**Examiner**

MICHAEL P. FERGUSON

**Art Unit**

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6, 7 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nellis (US 195,723) in view of Robbins, Jr. (US Re. 32,707), Nye (US 3,552,613) and Sinclair (US 327,731).

As to claims 1, 4 and 6, Nellis discloses a fencing system, comprising:

a first rail consisting of wire, wherein the rail is rigid yet manually deformable in the absence of any assembly thereof with the fencing system;

a slotted connector **B** having a face plate with two slots defined by a tongue **b** projecting from the face in a planar surface thereof, the tongue separating the two slots, the connector having a front side and a rear side and also having a post attachment end;

a free end of the rail being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the tongue, and then back through the second slot; and

a post **A** to which the slotted connector is attached using a fastener **b'**

(Figures 1, 2 and 5, column 1 lines 16-27).

Nellis fails to disclose a fencing system wherein the first rail consists of at least two metal wires ensheathed in a plastic web; and wherein the slotted connector has a face plate with two slots formed within the face plate in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots, wherein the slotted connector comprises return edges extending along opposing sides of the face plate, the return edges extending perpendicularly from and past the face plate; a free end of the rail being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the middle portion, and then back through the second slot; wherein the face plate comprises a throughhole adapted to receive the fastener which permits the connector to pivot about the fastener; wherein the faceplate includes a bend between the first slot and the post attachment end.

Robbins, Jr. teaches a fencing system wherein a first rail consists of at least two metal wires **10,12** ensheathed in a plastic web **14**; the plastic ensheathed wire providing for a strong, high-visibility, aesthetically pleasing fence rail, which will not cut or gouge the hides of valuable livestock (Figures 1 and 2, column 1 line 67-column 2 line 30). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the rail consists of plastic ensheathed wire as taught by Robbins, Jr. in order to provide for a strong, high-visibility, aesthetically pleasing fence rail, which will not cut or gouge the hides of valuable livestock.

Nye teaches a system comprising a pivotable slotted connector **16** having a face plate with two slots **17** formed within the face plate in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots, the connector having a front side and a rear side and also having a post attachment end; a free end of a rail **14** being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot nearest the post attachment end, around the middle portion, and then back through the second slot; wherein the face plate comprises a throughhole **18** adapted to receive a fastener **19** which permits the connector to pivot about the fastener; wherein the faceplate includes a bend between the first slot and the post attachment end (a bend constituted by the angular peripheral shape of face plate **16**; Figure 4); each pivotable slotted connector **16** comprising opening **18** permitting the connector to pivot to a desired optimal angle and slots **17** tightly securing the rail at a desired tension, providing for quick, secure, adjustable tensioning of an individual rail **14** (Figures 1-4, column 2 lines 27-42).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis to comprise separate pivotable slotted connectors each comprising a face plate with two slots and a through hole as taught by Nye in order to provide a connector which can pivot to a desired optimal angle and tightly secure a rail at a desired tension, providing for quick, secure, adjustable tensioning of each individual rail.

Sinclair teaches a slotted connector **A** comprising a face plate with two slots **B** formed with the face plate in a planar surface thereof, and return edges **A'** extending along opposing sides of the face plate, the return edges extending perpendicularly from and past the face plate; return edges **A'** ensuring proper alignment of rails on slotted connector **A**, ensuring a secure, stable connection between the rails and the connector (Figures 1-3, lines 27-37). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis in view of Nye to wherein the slotted connector comprises return edges as taught by Sinclair in order to ensure proper alignment of each rail on each slotted connector, ensuring a secure, stable connection between the rail and the connector.

As to claim 7, Nellis discloses a fencing system wherein the connector **B** is made of steel (column 2 lines 16-21).

As to claim 9, Nellis fails to disclose a fencing system wherein the post is a wooden post with a circular cross section. Nellis does not disclose any structural or functional significance as to the specific cross sectional shape of the post.

The applicant is reminded that a change in the shape of a prior art device, wherein there is no structural or functional significance disclosed as to the specific shape of an element, is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention

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was made to modify the fencing system disclosed by Nellis wherein the post has a circular cross section as Nellis does not disclose any structural or functional significance as to the specific cross sectional shape of the post, and as such change in shape is a design consideration within the skill of the art which would yield expected and predictable results.

Robbins, Jr. teaches a fencing system wherein a post is a wooden post **16**; wood being a common fence material, fence composition being selected on the basis of initial and upkeep costs, durability, strength and aesthetic characteristics (Figure 1, column 4 lines 3-5). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis wherein the post is wooden as taught by Robbins, Jr. as wood is a common fence material, fence composition being selected on the basis of initial and upkeep costs, durability, strength and aesthetic characteristics.

As to claims 10, 11 and 12, Nellis in view of Robbins, Jr. and Nye fails to disclose a fencing system including a slotted joining connector comprising a face plate with a first slot, a second slot, and a third slot, the joining connector having a front side and a rear side; and a second rail consisting of at least two metal wires ensheathed in a plastic web, with ends of the first and second rails being in an abutting relationship to each other, wherein the first slot and the second slot of the joining connector are adapted to receive the abutting end of the first rail and the second slot and the third slot of the joining connector are adapted to receive the abutting end of the second rail.

Sinclair teaches a slotted joining connector **A** comprising a face plate with a first slot **B**, a second slot **B**, and a third slot **B**, the joining connector having a front side and a rear side; and first and second rails, with ends of the first and second rails being in abutting relationship to each other, wherein the first slot and the second slot of the joining connector are adapted to receive the abutting end of the first rail and the second slot and the third slot of the joining connector are adapted to receive the abutting end of the second rail; joining connector **A** enabling the ends of two adjacent rails to be easily and securely connected to one another, while enabling each rail to be independently tightened (Figures 1-3, lines 27-37). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis in view of Robbins, Jr. and Nye to comprise a second rail in order to provide a sufficient length of railing material between two adjacent posts, and to comprise a joining connector as taught by Sinclair in order to enable the ends of two adjacent rails to be easily and securely connected to one another, while enabling each rail to be independently tightened.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nellis in view of Robbins, Jr., Nye and Sinclair as applied to claim 1 above, and further in view of Cammack (US 4,526,348).

As to claim 5, Nellis in view of Robbins, Jr., Nye and Sinclair fails to disclose a fencing system wherein the fastener is a lag bolt.

Cammack teaches a fencing system wherein a fastener is a lag bolt; the lag bolt providing the convenience of assembling the fencing system without



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having to first drill holes through the fence posts. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fencing system disclosed by Nellis in view of Robbins, Jr., Nye and Sinclair wherein the fastener is a lag bolt as taught by Cammack in order to provide the convenience of assembling the fencing system without having to first drill holes through the fence posts.

### ***Response to Arguments***

4. Applicant's arguments, filed June 16, 2008, with respect to the rejection(s) of claim(s) 1-4, 6 and 7 under 35 USC 103 in view of Nellis (US 195,723) in view of Robbins, Jr. (US Re. 32,707) and Nye (US 3,552,613) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nellis in view of Robbins, Jr., Nye and Sinclair (US 327,731).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (6:30am-3:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MPF  
09/02/08

/Michael P. Ferguson/  
Primary Examiner, Art Unit 3679